



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Keller-Martin Organization, Inc.

File: B-237300

Date: February 1, 1990

Donald O. Ferguson, Esq., Gardner, Ferguson, Sommers & Davis, Inc., for the protester.
E.L. Harper, Associate DAS for Acquisition, for the agency.
Robert Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that descriptive literature requirement in solicitation was not sufficiently specific filed after protester's bid was rejected for failure to submit such literature is dismissed as untimely because General Accounting Office's Bid Protest Regulations require that protests of alleged solicitation improprieties be filed before bid opening.

DECISION

Keller-Martin Organization, Inc., protests the rejection of its bid under invitation for bids (IFB) No. 671-106-89, issued by the Department of Veterans Affairs (VA) for the replacement of a damaged incinerator system at the VA Medical Center at San Antonio, Texas. The protester complains that its bid was improperly rejected because of its failure to submit descriptive literature.

We dismiss the protest.

The solicitation, which was issued on August 21, 1989, required bidders to list the manufacturer, model number, and a number of significant characteristics of the major equipment items to be installed such as the incinerator, flare safeguard, safety control, microprocessor controls, boiler, and scrubber. The solicitation also included a warning that "Descriptive literature and qualification data is required with all bids submitted," and contained the

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standard Descriptive Literature clause, which appears at Federal Acquisition Regulation § 52.214-21. That clause generally describes the type of literature required and indicates that failure to submit the required literature will result in bid rejection.

The protester's bid, which was the lowest of the five received, was rejected as nonresponsive because it contained no literature at all describing the incinerator manufactured by CIL Incinerator Systems, Inc., or any other of the required items. Subsequently, award was made to D.E.W., Inc. and D.E. Wurzbach based on its higher bid offering a Cleaver-Brooks incinerator and including descriptive literature. The protester bases its objection to the rejection of its bid on the argument that the solicitation was defective because it failed to adequately advise bidders of the nature and extent of descriptive literature required. In this regard, the protester states that since the IFB contained many pages of different specification requirements and the descriptive literature clause in the IFB did not specify which particular items required the submission of descriptive data, bidders could not reasonably decide what type of literature was needed.

While we agree with the protester that the solicitation should have more clearly described which items were covered by the literature requirement, it was clear from the solicitation, which included both the standard clause and a specific warning, that descriptive literature was indeed required. Bidders were also plainly warned that failure to submit such literature could result in rejection of the bid as nonresponsive.

Under the circumstances it was simply not reasonable for the protester to merely submit its bid with no literature at all and we therefore have no objection to the agency's rejection of Keller-Martin's bid on that basis. See Montronics, B-228219, Nov. 30, 1987, 87-2 CPD ¶ 527. Further, if Keller-Martin was confused as to exactly what literature was required it should have protested prior to bid opening. In this connection our Bid Protest Regulations require that protests such as this which are essentially based upon alleged improprieties in a solicitation which should be apparent prior to bid opening be filed prior to that time. 4 C.F.R. § 21.2(a)(1) (1989). Therefore, we dismiss as untimely Keller-Martin's protest which was not filed until after it learned that its bid was rejected.

Moreover, the record shows that another bidder offered the same model CIL incinerator as did the protester and the agency, after reviewing that bidder's descriptive

literature, determined that the incinerator did not meet the IFB specifications and rejected the bid. The agency protest report listed the reasons for the rejection of the CIL incinerator such as an inadequate trash-to-steam ratio, and an inadequate trash loading hopper. Since the protester has chosen not to respond and the grounds for rejection seem to be reasonable, we have no basis to conclude that the agency's rejection of the CIL incinerator was improper. Therefore it appears that, even if the protester had submitted literature describing its incinerator, its bid would have been rejected.

The protest is dismissed.

Michael Golden
for

Ronald Berger
Associate General Counsel